

April 16, 2002

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Angela B. Styles
Administrator

SUBJECT: Contractor Responsibility Determinations and Indefinite-Delivery Contracts

Under Federal Acquisition Regulation (FAR) Subpart 9.1, a contracting officer must make an affirmative determination of present responsibility before awarding a contract to, or making purchases from, a contractor. This requirement applies to all contract types, including indefinite-delivery contracts.

A contractor that is debarred, suspended, or proposed for debarment under FAR Subpart 9.4 is not presently responsible and is excluded from receiving government contracts. However, under FAR 9.405-1(b), agencies "may continue to place orders against existing contracts, including indefinite-delivery contracts, in the absence of a termination." Because this FAR provision is discretionary in nature, agencies are not prohibited from awarding task orders to contractors that are debarred, suspended, or proposed for debarment. This provision creates a significant risk that the government will not be adequately protected. Accordingly, I am asking the FAR Council to consider revising FAR 9.405-1(b) to address this risk.

A current Defense FAR Supplement (DFARS) provision may serve as a model for the FAR revision. Under DFARS 209.405-1, Department of Defense (DoD) contracting officers shall not i) place orders exceeding the guaranteed minimum under indefinite-quantity contracts; or ii) place orders against Federal Supply Schedule contracts when the agency is an optional user, unless the agency head makes a written determination that a compelling reason exists to do so.

Contracting officers should be mindful that FAR 9.405-1(b) is discretionary, stating that agencies "may continue to place orders against existing contracts" (emphasis added). The FAR provision does not require the placement of orders with nonresponsible contractors. If a contracting officer places an order under an existing contract with a contractor that is debarred, suspended, or proposed for debarment, the contract action should be justified in writing by the cognizant contracting officer.

cc:
Agency General Counsels
Agency Senior Procurement Executives

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